

§ 36C-8A-3. Duty and liability of power holder.

(a) A power holder is a fiduciary with respect to the powers conferred upon the power holder who, as such, is required to act in good faith and in accordance with the purposes and terms of a trust and the interests of the beneficiaries, except a power holder is not a fiduciary with respect to the following:

- (1) A power to remove and appoint a trustee or power holder.
- (2) A power that constitutes a power of appointment held by a beneficiary of a trust.
- (3) A power the exercise or nonexercise of which may affect only the interests of the power holder and no other beneficiary.

(b) A power holder is liable for any loss that results from breach of fiduciary duty occurring as a result of the exercise or nonexercise of the power.

(c) The following provisions applicable to a trustee shall also be applicable to a power holder with respect to powers conferred upon the power holder as a fiduciary:

- (1) The provisions of G.S. 36C-8-814 regarding discretionary powers and tax savings.
- (2) The provisions of G.S. 36C-10-1001 through G.S. 36C-10-1012 regarding liability of trustees and rights of third persons dealing with trustees.
- (3) The provisions of Article 9 of this Chapter regarding the uniform prudent investor rule. (2012-18, s. 3.4.)